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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 46,556

GEORGE G. EDDY,
Petitioner,

vs.

THE SUPREME COURT OF THE STATE OF MICHIGAN,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

To the Supreme Court of the United States:

Petitioner respectfully shows:

George G. Eddy, respectfully prays that a Writ of Certiorari issue to review a judgment of the Supreme Court of the State of Michigan, entered in the cause of People of the State of Michigan v. George G. Eddy, October 7, 1957.

CITATION TO OPINION BELOW

The opinion of the Supreme Court of the State of Michigan is printed in the appendix, *postea* p. 11. It is reported in 85 N. W. 2, 118.

JURISDICTION

The Judgment of the Supreme Court of The State of Michigan was entered October 7, 1957. (Appendix p. 8.) No motion for a rehearing was made. The jurisdiction of this court is invoked under 28 U. S. C. 1257 (3), a title right privilege or immunity being set up or claimed under the Constitution. Extension of time to file this petition to and including February 4, 1958 was granted 1-3-58.

The issue was raised in the trial court by motion to strike testimony, allegedly obtained by unlawful search and seizure (R. 162) which motion was denied (R. 146, 149, 163). The names of the witnesses were obtained through the search and seizure.

The issue was raised in the Michigan Supreme Court by Reasons and Grounds of Appeal 4, 5 and 9 (R. 315) supported by brief.

QUESTION PRESENTED

Whether or not the testimony given by purchasers of securities issued by Eddy should not have been stricken on motion at the trial because obtained by unlawful search and seizure, under Amendments 4 and 5 or carried over to state agencies by Amendment 14.

CONSTITUTIONAL PROVISIONS INVOLVED

The constitutional provisions involved are the 14th Amendment and the 4th and 5th Amendments, printed in appendix B, page 10.

STATEMENT

Eddy was charged in Recorder's Court for the City of Detroit, in the first count of an information filed May 18, 1954 (R. 2-3) with violation of the Michigan Blue Sky Law, i.e., that he sold securities to persons which securities had not been accepted for sale by Michigan Corporation and Securities Commission, contrary to Section 7 of Act 220, Public Acts of Michigan for the year 1923, as amended, '48 Mich. C. L. Sec. 451.107. A second violation was charged under Count 2, which count was dismissed on the trial court's own motion (R. 273-274). Longyear, a co-defendant was also charged in each count.

The Prosecution's testimony consisted largely of that of purchasers of fractional shares in possible future profits from the sale of a boat hull, designed by Eddy for landing troops on beaches, the special features of which boat hull were shallow draft and speed in retraction from beaches (R. 18-140). Each purchaser was given a certificate (R. 22, 28) evidencing his ownership, and reciting the transaction faithfully (R. 18, 140). Eddy owned patent applications on the hull, called Twin Skiff Boat Hull (R. 187, 188). The securities involved were these certificates. Eddy, and the co-defendant Longyear were found guilty as charged (R. 10). Both were sentenced August 2, 1954

(R. 11). A motion for a new trial on behalf of Eddy was denied April 11, 1955 (R. 13) but a like motion on behalf of Longyear granted May 9, 1955 (R. 14) and on the same day a *nolle prosse* was entered as to him (R. 14, 15).

Claim of appeal as to Eddy, to the Michigan Supreme Court, was filed April 13, 1955 (R. 13).

The facts concerning the federal question are as follows:

October 10, 1954, Eddy was arrested without warrant in a hotel lunch room in Detroit, and taken to the office of an Assistant Prosecuting Attorney in Detroit for questioning (R. 214). His automobile had been just previously seized from a nearby parking lot, and keys taken, including the keys to his home in Bay City (R. 158). By means of the keys, the arresting officer, Ewing, went into Eddy's home in Bay City the same day, and took away books and records, including records of names of investors in the boat hull profits all without any kind of warrant (R. 142-143). There was no intimation that the automobile was in any way connected with the alleged offense.

No criminal complaint was filed against Eddy until December 13, 1953 (R. 4) over two months later.

In the interim a mandamus proceeding was started in Wayne County Circuit Court to compel return of the records seized (R. 143), and their return was ordered, notwithstanding the officer did not return all the records until photostats of some had been made, and others were not returned at all (R. 144-145). The officer testified this was on orders of an Assistant Prosecuting Attorney (R. 145).

REASONS FOR GRANTING THE WRIT

The issue is broader than its mere application to Petitioner. The boat hull involved, is of importance to the national defense effort, and of course its development cannot go on under the present legal impediment. There is direct testimony of an engineer that it is the "best landing boat that has been developed up to the present time" and is "very important thing in the defense of the country" (R. 261) and an eye witness to Navy tests testified that it behaved superlatively in the tests (R. 245-246).

Eddy is now employed by three corporations, in the vicinity of Detroit, doing important work for them. These corporations employ a large number of employees in the area surrounding Detroit. The issue is of importance as touching upon the employment situation.

The Supreme Court of Michigan planked its decision on the theory that no evidence except physical and tangible evidence could be subject to the search and seizure provisions of the Constitution. This we believe to be erroneous. The provisions of the 4th and 5th Amendments are made applicable to state agencies by the 14th Amendment. The seizing of lists of witnesses is equivalent to compelling a witness to testify against himself, which is equivalent to an unlawful search and seizure.

U. S. v. Lefkowitz, 285 U. S. 452;
U. S. v. Thomson (C. C. A. 7th) 113 F. 2d 643;
Boyd v. U. S., 116 U. S. 616.

The Supreme Court of Michigan in its opinion casts doubt on the importance of the evidence attacked, implying that a case would have existed without it, possibly.

This is contrary to the record. The officers had names of only three prosecution witnesses—Clark, Bushaw and Pacernick—before the search and seizure. None of these witnesses knew the subscribers, under their own testimony. The testimony of these three men could not make out a case. Clark went to Eddy to get a list of the name of the purchaser of profit interests (R. 269). Bushaw and Pacernick both testified they knew none of the other subscribers (R. 112, 133, 137). The language of the Michigan Supreme Court opinion, to the effect that the names of "some" of these witnesses were obtained by the unlawful search and seizure is misleading. No case existed outside the testimony of those witnesses which was subject to the motion to strike, and the reasoning of the Michigan Supreme Court is in that respect fallacious, we feel.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

GEORGE G. EDDY, Per se.

Dated: February 4, 1958.

APPENDIX A

ORDER GRANTING LEAVE TO APPEAL

The People of the State of Michigan, Plaintiff, v. George G. Eddy, Defendant.	No. 46,556.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the twelfth day of April, in the year of our Lord one thousand nine hundred and fifty-six.

Present: The Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, Emerson R. Boyles, Harry F. Kelly, Leland W. Carr, Eugene F. Black, Associate Justices.

In this cause an application is filed by defendant for leave to appeal from the judgment and sentence of the Recorder's Court for the City of Detroit, and a brief in opposition thereto having been filed, by plaintiff, and due consideration thereof having been had by the Court, it is ordered that the application be and the same is hereby granted.

ORDER OF SUBMISSION OF CAUSE

The People of the State of Michigan, v. George G. Eddy.	No. 46,556.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the City of Lansing, on the thirteenth day of June in the year of our Lord one thousand nine hundred and fifty-seven.

Present the Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, George Edwards, John D. Voelker, Harry F. Kelly, Leland W. Carr, Eugene F. Black, Associate Justices.

This cause coming on to be heard is duly submitted on briefs.

JUDGMENT

The People of the State of Michigan, Plaintiff, v. George G. Eddy, Defendant.	No. 46,556.

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room in the Capitol in the City of Lansing, on the seventh day of October, in the year of our Lord one thousand nine hundred and fifty-seven.

Present the Honorable John R. Dethmers, Chief Justice, Edward M. Sharpe, Talbot Smith, George Edwards, John D. Voelker, Harry F. Kelly, Leland W. Carr, Eugene F. Black, Associate Justices.

The record and proceedings in this cause having been brought to this court by appeal from the Recorder's Court for the City of Detroit, and the same, and the grounds of appeal specified therein, having been seen and inspected and duly considered by the Court, and it appearing to this Court that in said record and proceedings, and in the giving of judgment in said Recorder's Court, there is NO ERROR, therefore it is ordered and adjudged that the judgment of said Recorder's Court for the city of Detroit be and the same is hereby in all things affirmed.

APPENDIX B

CONSTITUTIONAL PROVISIONS

ARTICLE IV (Fourth Amendment)

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V (Fifth Amendment)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

FOURTEENTH AMENDMENT

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX C

OPINION BELOW (85 N. W. 2d, p. 118)

DETHMERS, Chief Justice.

Defendant was convicted of selling securities which had not been accepted for filing for sale by the Michigan Corporation and Securities Commission, in violation of Section 7 of the Blue Sky Law (C. L. 1948, Sec. 451.101 *et seq.*, Stat. Ann. Sec. 19.741 *et seq.*). Proofs established that he had made a large number of such sales in the course of repeated and successive transactions of a like character to several persons.

(1-4.) It is defendant's contention that the identity of some of the persons to whom he made such sales and who appeared as witnesses for the People became known to the officers only through their examination of records unlawfully seized by them in his home and that, therefore, the court erred in not granting his motion to strike "all of the testimony of all of the persons who bought" such securities from defendant. The record does not disclose, and apparently defendant did not attempt to show, which of the witnesses were so discovered by the officers to be such purchasers, but only that some, unnamed were; and it was affirmatively shown that at least some of them were previously known to be such by the officers. If any of the evidence which defendant moved to have stricken were to be considered incompetent for the reasons advanced, the motion was yet properly denied because it covered some testimony which manifestly did not suffer from the claimed infirmity. *People v. Dowd*, 44 Mich. 488, 7 N. W. 71; *People*

v. Stanley, 101 Mich. 93, 59 N. W. 498. Furthermore, defendant cites and we find no authority for his proposition that the otherwise competent testimony of witnesses is rendered incompetent by the fact that the knowledge that they were possessed of information qualifying them to testify in the case came to the officers through their perusal of records unlawfully seized by them. No unlawfully seized evidence was introduced. The facts as to how the authorities learned whom to subpoena as witnesses are immaterial to the question of the competence of the testimony they gave. Learning of their identity through unlawfully seized documents could not serve to seal their lips forever.

(5) Defendant contends that his motion for directed verdict of not guilty should have been granted on the ground that the securities he sold were his own property and that such sales were not violative of section 7 of the Blue Sky Law as charged, even though the securities had not been accepted for filing for sale by the Commission. Defendant's ingenious argument in this connection runs about as follows:—that the People claimed and showed continued and successive transactions by defendant in selling the securities in question; that section 21 of the act provides that nothing in subdivision II of the act shall be construed as prohibiting an owner of securities from selling them, excepting that when he sells them in continued and successive transactions he shall be deemed a "dealer" therein, that therefore, under the people's proofs he was, at most, a dealer; that under the definitions of section 2 of the act the terms "salesman" and "dealer" are mutually exclusive, that hence, because defendant was a dealer he could not have been a salesman or seller; and that section 7 under which defendant was convicted, treats only with selling or a seller and not with a dealer and, therefore, defendant being a dealer and not a seller, he could not have been guilty of violating Section 7. The

reasoning is spurious. The provision in section 21 that one engaged in continued and successive transactions shall be deemed a "dealer" must be read in the light of the words immediately following, namely, "that he shall be subject to the provisions hereof", that is to say, subject to the provisions of section 21 requiring the procuring of a dealer's license. The purpose of the mentioned designation as a dealer is solely to impose the requirement of a dealer's license and not to exempt from the requirement of section 7 that securities sold must first be accepted by the commission. It will be noted that the exemption in section 21 with respect to an owner's sale of his own securities extends by express terms only to the prohibitions contained in subdivision II of the act and not to the requirements of section 7 which is contained in subdivision I. There is no language in either sections 21 or 7, or elsewhere in the act, exempting a dealer from the prohibition of section 7 that no security shall be sold by any person until it has been accepted for filing for sale by the commission. That prohibition of section 7 extends to "any person", whether dealer, seller, salesman or whatever. The only exceptions are provided in Section 7 itself and relate not to kinds of persons making the sales, but rather, to the kinds of securities enumerated in section 4 and to the kinds of sales enumerated in section 5 of the act, of which the exception most nearly pertinent here is that contained in section 5(c) namely, "an isolated transaction • • • by the owner • • • not being made in the course of repeated and successive transactions of a like character by such owner". Inasmuch as defendant's sales were repeated and successive, they did not come within that exception.

Affirmed.

Sharpe, Smith, Edwards, Kelly, Carr, Black and Voelker JJ concur.

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No. 765

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 46,556

GEORGE G. EDDY,
Petitioner,

vs.

THE SUPREME COURT OF THE STATE OF MICHIGAN
Respondent

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

A very short memorandum in reply to respondent's brief in answer to the petition is necessary.

II.

(a) Respondent calls to the court's attention that there was an issue of fact as to whether petitioner had consented to the search and seizure, on page 2 of his brief.

We call attention to the fact that there was subsequently a Mandamus proceeding in which that issue of fact was necessarily resolved in favor of petitioner.

(b) Respondent claims that we do not point out what witnesses were discovered in the search and seizures.

But petitioner points out (with record references) that the prosecution knew of only three witnesses prior to the search and seizure. See petition page 6.

Respondent's reference is of course that we do not show that our motion to strike if granted would merely have changed the result. But obviously the three witnesses known to the prosecution could not have made a *prima facie* case.

(c) Respondent claims that the motion to strike was not well taken because no motion to suppress was made in advance of trial.

We point out that it is well settled that no motion to suppress in advance of trial is necessary, when the grounds of the motion are first made known to defendant at the trial.

See *Gouled v. U. S.*, 255 U. S. 298; 65 Law Ed. 647; 41 Sup. Ct. 261.

(d) Despite the statement of the Solicitor General that Eddy was arrested October 10th "on this charge", there is nothing to show that the arrest on that date was in

this case at all. The record simply shows that an arrest was made on that date and Eddy claims that his interrogation touched only on Huron Eddy minute books and stock records, and nothing pertaining to Twin Skiff. And the warrent in this case was not issued for over two months later.

We ask that the Certiorari be allowed.

Respectfully submitted,

GEORGE G. EDDY *Pro. Se.*,
VALOIS E. CROSSLEY,
Of Counsel.

March 12, 1958.

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FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 765

GEORGE G. EDDY,
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vs.

THE STATE OF MICHIGAN
Respondent

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

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SPEAKER-HINES AND THOMAS, INC., STATE PRINTERS, LANSING, MICH. — 1958

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OCTOBER TERM, 1957

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Respondent

RESPONDENT'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

Respondent respectfully shows:

Petitioner seeks to review a decision of the Supreme Court of the State of Michigan affirming judgment of conviction for the illegal sale of unregistered securities in a cause entitled *People of the State of Michigan vs. George G. Eddy, Defendant.* The proper respondent is the state, not the court.

JURISDICTION

The issue on search and seizure posed here was not properly raised in the trial court. A motion to suppress evidence based upon claimed unreasonable search must be made before trial; it will not be considered if raised for

the first time while trial is in progress.[1] The motion was not made in the trial court until the close of the prosecution case in main;[2] it was an oral request to strike "all of the testimony of all of the witnesses who bought" securities. It was denied by the trial judge who observed that:

1. There was testimony that the search and scrutiny of the records were accomplished with defendant's permission; (p. 163 Michigan Record)

2. Neither the records nor their substance had been offered in evidence; (p. 172 Michigan Record)

3. There was no evidence whatever that the name of any specific investor who later became a prosecution witness had been learned from the examination of the records. (p. 172 Michigan Record)

QUESTION PRESENTED

The question stated in the petition must be viewed in the context of the disputed issue of fact on permission to search, and of the lack of proof to identify a single investor whose name had been learned from examination of the records.

CONSTITUTIONAL PROVISIONS INVOLVED

Clearly the fifth and fourteenth amendments do not apply. They relate to due process, not to search and seizure.

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[1]

People vs. Marxhausen, 204 Mich. 559, 573 (3 ALR 1505, 1511).

[2]

The motion for new trial likewise was silent on this topic. Pp. 309, 310, Printed Record in Mich. Supreme Court. Also called Michigan Record.

The fourth amendment, proscribing unreasonable searches, has been held to be inapplicable to the states.[3]

RE: PETITIONER'S STATEMENT OF FACTS

The respondent disputes petitioner's version of the facts as it appears in the second and concluding paragraphs on p. 4 of the petition.

The Michigan Record discloses that when petitioner was arrested by Detroit detectives acting at the behest of representatives of the Michigan Corporation and Securities Commission, and questioned as to the whereabouts of the books of the Huron-Eddy Company, a Michigan corporation of which he was an officer, he responded that they were in his auto-trailer at Bay City (110 miles away), which he used as a combination office and home. He described the vehicle's exact location, selected its door key from a group on his key ring, and gave the officers permission to examine the records they sought.[4] As to the mandamus proceedings in the Wayne Circuit Court to compel surrender of the records taken, their return was not ordered. On the contrary, the proceedings abated without determination, after the records had been voluntarily returned.[5]

Irrespective of the existence of permission to search, the record is barren of the name of a single witness pur-

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[3]
Feldman vs. U.S., 322 U.S. 487, 492, citing Burdeau vs. McDowell, 256 U.S. 465.

[4]
P. 154, Michigan Record.

[5]
P. 7, Appellee's Brief in Michigan Supreme Court.

portedly obtained from a scrutiny of the records which the petitioner now claims were unlawfully seized.[6]

REASONS FOR DENYING THE WRIT

I.

In the Michigan opinion is found the following significant and controlling language:

> "• • • The record does not disclose, and apparently defendant did not attempt to show, which of the witnesses were so discovered by the officers to be such purchasers, but only that some, unnamed, were; and it was affirmatively shown that at least some of them were previously known to be such by the officers."

Some forty investors testified for the prosecution according to a tabulation found in the appellant's brief below.[7] Detective Ewing, on cross-examination testified that the names of "some" of the persons who were called as prosecution witnesses were discovered from the records. Nevertheless, defense counsel did not pursue this line of inquiry; he made no effort to discover which, or how many names had been learned from scrutiny of the books, or the specific records wherein the information may have reposed. Having thus abandoned the pursuit in the trial court, he is not free to resurrect the claim here.

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[6]

P. 12, Petition for Certiorari, Lines 8-11. See also quoted language in first paragraph under next heading—"REASONS FOR DENYING THE WRIT".

[7]

Pp. 13, 14, Appellant's Brief.

II.

Representations at the foot of p. 5 and atop p. 6 to the effect that the Michigan Supreme Court erroneously implied that a good case existed without the challenged evidence is an attempt to substitute counsel's views for the court's published opinion. The attack continues:

> "The officers had names of only three prosecution witnesses—Clark, Bushaw and Pacernick—before the search and seizure. None of these witnesses knew the subscribers, under their own testimony. The testimony of these three men could not make out a case."

The Michigan Supreme Court held otherwise, and that tribunal's assessment of the evidence on the point must control. In passing, we are constrained to comment that the record does not support the assertion that the officers had the names of only three prosecution witnesses before the search. Witness Clark, an examiner for the Michigan Corporation and Securities Commission, had received several complaints against the petitioner involving the sale of unregistered securities, had talked to the petitioner concerning them, and had seen several investors.[8]

The Michigan Supreme Court's opinion speaks forcefully on this fact:

> "If any of the evidence which defendant moved to have stricken were to be considered incompetent for the reasons advanced, the motion was yet properly

---

[8] Testimony of Hugh Clark, Pp. 268-272, Printed Record.

denied because it covered some testimony which manifestly did not suffer from the claimed infirmity."[9]

III.

Petitioner failed to present a motion to suppress the evidence prior to trial, as required by state practice.

IV.

Petitioner did not urge the claim of unreasonable search in his motion for new trial.

V.

No evidence from the scrutinized records was offered in the prosecution's case.

VI.

Petitioner complains that his records were unreasonably taken, yet the prosecution produced testimony that the search was undertaken with petitioner's permission. The issue was therefore one of fact, which was resolved in the state court.

VII.

The fourth amendment is not applicable to the states, and therefore the petition discloses no substantial federal question.

---

[9]
Petition for Certiorari, P. 12, Lines 13-18.

CONCLUSION

It is therefore urged that the petition for a writ of certiorari be denied.

Respectfully submitted,

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